

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
On-Brief July 11, 2001

ROY TAYLOR v. TENNESSEE DEPARTMENT OF CORRECTION, ET AL.

**A Direct Appeal from the Circuit Court for Lauderdale County
No. 5455 The Honorable Joseph H. Walker, Judge**

No. W2001-00583-COA-R3-CV - Filed October 18, 2001

Prisoner filed a petition for writ of certiorari seeking review of two disciplinary actions the Tennessee Department of Corrections filed against him. The Circuit Court of Lauderdale County dismissed the action, finding that the petition was not filed within the sixty-day limitation period set out in T.C.A. § 27-9-102 (2000). We affirm in part and reverse in part.

**Tenn.R.App.P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed in Part;
Reversed in Part**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Roy Taylor, Pro Se

No Appearance by Tennessee Department of Correction

MEMORANDUM OPINION¹

This is an appeal from the dismissal of a pro se Petition for Writ of Certiorari filed in the Circuit Court of Lauderdale County by Petitioner Roy Taylor (“Mr. Taylor”), against employees of the Tennessee Department of Correction (“TDOC”). Mr. Taylor is seeking review of two

¹Rule 10 of the Rules of the Court of Appeals of Tennessee states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by Memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

disciplinary charges made against him by employees of the West Tennessee State Prison in Lauderdale County, Tennessee, arising out of incidents which took place on August 27, 2000. In the first incident (the “assault charge”), the TDOC disciplinary report reveals that Mr. Taylor assaulted a TDOC employee with a telephone. The second incident (the “weapons charge”), which took place a few minutes later, involved the confiscation of a 14" typewriter shank from Mr. Taylor by TDOC guards.

Following disciplinary hearings, Mr. Taylor appealed both infractions to the Warden and the Commissioner of TDOC, alleging the disciplinary charges were unwarranted, and that he was denied due process. On October 27, 2000, the Commissioner affirmed the assault charge and, on November 1, 2000, the Commissioner affirmed the weapons charge. Mr. Taylor filed a Petition for Writ of Certiorari in Lake County Circuit Court on November 22, 2000, which the court dismissed for lack of proper venue. Mr. Taylor then filed a Petition for Writ of Certiorari in Lauderdale County Circuit Court on December 28, 2000. On February 5, 2001, the Circuit Court entered an Order dismissing Mr. Taylor’s petition, which reads, in relevant part:

The petitioner files for writ of certiorari alleging that he was charged with a disciplinary infraction and that a hearing was conducted on September 8, 2000. He says the decision was arbitrary and capricious, and that he was denied an impartial tribunal. He appealed the decision to the Warden, who affirmed the conviction on September 22, 2000.

The proper procedure for challenging a prison disciplinary action is petition for common law writ of certiorari. The petition must be filed within sixty days of the challenged action. T.C.A. 27-9-102. The petition was filed December 28, 2000, which is more than sixty days from the challenged action.

The petition not being filed within the statute of limitations, it is hereby dismissed.

Mr. Taylor appeals the dismissal of his Petition for Writ of Certiorari. Although Mr. Taylor raises several issues on appeal, we believe the only issue before this Court is whether the trial court erred in dismissing the Petition as untimely.

A motion to dismiss a complaint for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint. It admits the truth of all relevant and material allegations but asserts that such allegations do not constitute a cause of action as a matter of law. *See Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997). Obviously, when considering a motion to dismiss for failure to state a claim upon which relief can be granted, we are limited to the examination of the complaint alone. *See Wolcotts Fin. Serv., Inc. v. McReynolds*, 807 S.W.2d 708 (Tenn. Ct. App. 1990). The basis for the motion is that the allegations in the complaint considered alone and taken as true are

insufficient to state a claim as a matter of law. *See Cornpropst v. Sloan*, 528 S.W.2d 188 (Tenn. 1975). In considering such a motion, the court should construe the complaint liberally in favor of the plaintiff, taking all the allegations of fact therein as true. *See Cook Uithoven v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934 (Tenn. 1994).

In reviewing the record in this case, it is apparent that, although Mr. Taylor sought judicial review of two separate disciplinary actions, the trial court addressed only one disciplinary action in its Order. We agree with the trial court that the assault charge which the Commissioner affirmed on October 27, 2000 is barred by T.C.A. § 27-9-102.² However, the weapons charge, which occurred on the same day, was given a separate hearing and was not affirmed by the Commissioner until November 1, 2000. Therefore, as to the weapons charge, Mr. Taylor's Petition was timely and should have been reviewed by the trial court.

For these reasons, we affirm the order of the trial court as to the assault charge, but reverse as to the weapons charge. This case is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are assessed to the Appellee.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.

²T.C.A. § 27-9-102 (2000) provides:

§ 27-9-102. Petitions Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, of the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review.